

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20745

IN RE: GRAND JURY SUBPOENAS

**WITNESS' EXTRAORDINARY
MOTION FOR BOND PENDING PETITION
FOR REHEARING EN BANC**

**Mike DeGeurin
Foreman, DeGeurin, Nugent & Gerger
909 Fannin, Suite 590
Houston, TX 77010
(713) 655-9000 Telephone
(713) 655-1812 Facsimile**

Counsel for Movant-Petitioner

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal. All individuals are from Houston, TX.

1. Vanessa Leggett	Movant-Petitioner
2. Mike DeGeurin	Attorney for Movant-Petitioner
3. Terry Clark	Assistant U.S. Attorney-Respondent
4. Edward Gallagher	Assistant U.S. Attorney-Respondent
5. Paula Offenhauser	Assistant U.S. Attorney-Respondent

Mike DeGeurin

I. STATEMENT OF THE CASE

It is respectfully requested that Vanessa Leggett, a freelance journalist, be granted bond pending her Petition for Rehearing En Banc. Ms. Leggett has been incarcerated since July 20, 2001 as a result of being held in civil contempt in U.S. District Court in the Southern District of Texas after she asserted a qualified First Amendment privilege and an absolute Fifth Amendment privilege in response to a federal grand jury subpoena.

Ms. Leggett filed her Petition for Rehearing En Banc on September 10, 2001. Since that time, the government has extended the grand jury past Christmas into next year (2002). The government has admitted that their subpoena is merely a “fishing expedition”.¹ Yet their speculative search for information has resulted in Ms. Leggett being held in custody more than twice as long as any other journalist in United States history. The incarceration of Ms. Leggett has been the subject of international concern due to its implications on press freedoms throughout the world. The event has been denounced by organizations and individuals from North, South and Central America, Europe and Africa.²

¹ During the July 19, 2001 contempt hearing, Assistant United States Attorney Terry Clark took the stand and made the following admission regarding the subpoena’s open-ended “add-on” request for unspecified witnesses:

Mike DeGeurin for Ms. Leggett:	"So you would admit that the add-on certainly makes it nonspecific?"
Terry Clark for the Government:	"I have to agree."
Mr. DeGeurin:	"Because you don't know who they are?"
Mr. Clark:	"I don't know if it's 100 or three, Mr. DeGeurin."

² The United States has received protests regarding the jailing of Ms. Leggett from countries that it previously criticized for similar acts against journalists— such as Cuba and Uruguay.

Ms. Leggett raises important issues of First and Fifth Amendment Privilege, at least one of which is of first impression for this Circuit. Ms. Leggett's incarceration was a "regretful" act by the District Court in order to accelerate review of these issues by the Court of Appeals under 28 U.S.C. § 1826.³ Ms. Leggett was then denied release on bond after the prosecutor inaccurately influenced the Court's opinion by stating:

What normally happens with the ones I've seen, Your Honor, sometimes the district courts set a bond and sometimes they don't. If a District Court does not set a bond in almost were [sic] case that I've seen on an expedited appeal to the Fifth Circuit, [the Fifth Circuit] almost always give[s] a bond pending appeal to the Fifth Circuit, because it is the contempt that gives them the right to appeal this hearing, which is the way it's going to get resolved, and that's what has to be done. And the life of the grand jury, it's my understanding if that's what the Court does, that's appropriate.

Neither the prosecutor nor the Court anticipated the lengthy incarceration of Ms. Leggett while her appeal was pending. Now that Ms. Leggett's appeal is no longer expedited, she should be released on bond while her case is properly litigated in the appellate courts.

Ms. Leggett is neither a flight risk nor a danger to the community. Ms. Leggett is a writer, college English teacher, law enforcement instructor and wife. Release from custody would allow her to return to her family, home and work— all located in Houston, Texas.

³ During the July 19, 2001 contempt hearing, the District Court stated to Ms. Leggett that it "regretfully will have to remand you into custody". The Court went on to later declare: "I'm not going to give her bond. She's going to have to go into custody. I'm sorry. But I just think that's the only way to do it. And the faster we do it, the faster you get to the Fifth Circuit. Faster the Fifth Circuit looks at it."

Surely the Government has made its point that it can incarcerate for months journalists who resist global, non specific discovery that require disclosure of confidential sources through a grand jury subpoena without demonstration of a need for the information or following their own guidelines which require a balancing of the assistant U. S. attorney's interest in the information with the public's First Amendment protected interest in a free and independent press. The government has further demonstrated that the price of appellate review is incarceration in addition to the cost of representation.

Ms. Leggett's is entitled to consideration for bond as her appeal is neither frivolous nor sought for delay. 18 U.S.C. §1826. It is respectfully requested that a bond be set and that it not exceed \$5,000.

II. Certificate of Conference

Movant conferred with opposing counsel, Assistant U.S. Attorney Terry Clark and Mr. Clark opposes this motion.

III. Conclusion

Counsel respectfully requests that Ms. Leggett be granted bond pending her Petition for Rehearing En Banc.

Respectfully submitted,

Mike DeGeurin

Foreman, DeGeurin, Nugent & Gerger

909

Fannin, Suite 590

Houston, TX 77010

(713) 655-9000 Telephone

(713) 655-1812 Facsimile

Federal No. 3558

Counsel for Movant-Petitioner

CERTIFICATE OF SERVICE

I certify that a copy of this **WITNESS' EXTRAORDINARY MOTION FOR BOND PENDING PETITION FOR REHEARING EN BANC** has been served on counsel for the United States of America at the following address on the day of filing:

Paula Offenhauser
Terry Clark
Edward Gallagher
Assistant United States Attorney
910 Travis Street, #1500
Houston, Texas 77002

Mike DeGeurin